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City of Long Beach, Lizardo and Mays

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

LEONIDES ENRIQUEZ, individually.

Plaintiff,

vs.

CITY OF LONG BEACH, a
governmental entity; and LIZARDO
Individually, MAYS, individually; DOE
"3", individually, DOE "4", individually,
DOES 5-10, inclusive.

Defendants.

Case No. 23-cv-6464-ODW-AJR

~~PROPOSED~~ **STIPULATED
PROTECTIVE ORDER**

1. GENERAL

1.1 Purposes and Limitations. Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special

1 protection from public disclosure and from use for any purpose other than prosecuting
2 this litigation may be warranted. Accordingly, the parties hereby stipulate to and
3 petition the Court to enter the following Stipulated Protective Order. The parties
4 acknowledge that this Order does not confer blanket protections on all disclosures or
5 responses to discovery and that the protection it affords from public disclosure and
6 use extends only to the limited information or items that are entitled to confidential
7 treatment under the applicable legal principles. The parties further acknowledge, as
8 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle
9 them to file confidential information under seal; Civil Local Rule 79-5 sets forth the
10 procedures that must be followed and the standards that will be applied when a party
11 seeks permission from the court to file material under seal.

12 1.2 Good Cause Statement. This case is likely to involve several
13 categories of sensitive records including: police reports containing personal
14 identifying information for witnesses that cooperated with law enforcement in
15 prosecuting violent crime; police personnel records; and Internal Affairs Records. The
16 parties request this protective order to facilitate prompt discovery while preserving
17 the legitimate privacy, safety, and confidentiality concerns that attach to certain
18 records.

19 Unfettered access to Long Beach Police Department (“The Department”)
20 police reports is not granted to the public. Instead, access is restricted to those
21 investigating the incident, involved in the incident or their representatives, those who
22 are prosecuting and/or defending those involved, and those who maintain the records.
23 Controlled access is necessary to not only assure the integrity and security of said
24 files, but also to ensure the privacy rights of those involved, especially third-party
25 witnesses/victims and minors are protected from possible retribution or retaliation for
26 their cooperation in a criminal investigation. Permitting uncontrolled disclosure can
27 disrupt the Department’s day-to-day operations, including but not limited to adversely
28 impacting the Department’s ability to thoroughly investigate incidents. It can also

1 present a risk to individuals who cooperate with law enforcement in investigating
2 violent crime.

3 The City, Department, and Defendants herein contend that they have an interest
4 in protecting their privacy rights relating to information in City officers' personnel
5 files as well as the privacy rights of third parties and other related information.

6 Further, the Department contends that information contained in personnel and
7 internal affairs files is gathered and maintained in confidence by the Department. The
8 information gathered in these case files generally includes the statements of third-
9 party witnesses collected in confidence. Witnesses are told that the confidentiality of
10 their statement will be protected and that they are for the confidential use of the
11 Department. The Department believes that uncontrolled release of this information
12 would cause needless intrusion into and violation of privacy rights and chill the
13 cooperation of witnesses. Though Plaintiff may be entitled, in certain limited
14 circumstances, to examine and receive information in police officers' personnel files
15 and internal affairs files, to the extent that they are relevant to their claims in the
16 above-captioned action, the City of Long Beach ("City") and the Long Beach Police
17 Department (the "Department") contend that a protective order is necessary to prevent
18 random and/or broad distribution of such information. Furthermore, this proposed
19 protective order was created for the purpose of protecting certain information that
20 may be subject to the official information privilege, law enforcement privilege, and
21 the right to privacy, as protected by the California and United States Constitution,
22 balanced with Plaintiff's right to discovery in this litigation.

23 It is the policy of the Department not to disclose information contained in its
24 employees personnel records, or other information contained in confidential police
25 personnel files, unless required by statute or ordered to do so by a court of competent
26 jurisdiction. Further, it is the policy of the Department not to disclose information
27 contained in police reports to those other than the parties involved in the incident,
28 their representatives, prosecutors, etc. unless ordered to do so by a court of competent

jurisdiction.

Within the Department, access to personnel files is restricted to those on a “need to know” basis. Controlled access to the files is regarded by the Department as essential in order to assure the integrity and security of such files. The Department contends that uncontrolled disclosure of such information can disrupt the Department’s vital, day-to-day operations, erode the integrity and security of the confidential personnel and related files, affect the morale of Department’s personnel, and frustrate the legitimate purposes of gathering the information in these files, including adversely impacting disciplinary procedures within the Department.

In light of the nature of the claims and allegations in this case and the parties’ representations that discovery in this case will involve the production of confidential records, and in order to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in connection with this action, to address their handling of such material at the end of the litigation, and to serve the ends of justice, a protective order for such information is justified in this matter. The parties shall not designate any information/documents as confidential without a good faith belief that such information/documents have been maintained in a confidential, non-public manner, and that there is good cause or a compelling reason why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Action: [this pending federal lawsuit]. ~~[*Option: consolidated or related actions.]~~

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection

1 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
2 Cause Statement.

3 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
4 support staff).

5 2.5 Designating Party: a Party or Non-Party that designates information or
6 items that it produces in disclosures or in responses to discovery as
7 “CONFIDENTIAL.”

8 2.6 Disclosure or Discovery Material: all items or information, regardless
9 of the medium or manner in which it is generated, stored, or maintained (including,
10 among other things, testimony, transcripts, and tangible things), that are produced or
11 generated in disclosures or responses to discovery in this matter.

12 2.7 Expert: a person with specialized knowledge or experience in a matter
13 pertinent to the litigation who has been retained by a Party or its counsel to serve as
14 an expert witness or as a consultant in this Action.

15 2.8 House Counsel: attorneys who are employees of a party to this Action.
16 House Counsel does not include Outside Counsel of Record or any other outside
17 counsel.

18 2.9 Non-Party: any natural person, partnership, corporation, association, or
19 other legal entity not named as a Party to this action.

20 2.10 Outside Counsel of Record: attorneys who are not employees of a party
21 to this Action but are retained to represent or advise a party to this Action and have
22 appeared in this Action on behalf of that party or are affiliated with a law firm that
23 has appeared on behalf of that party, including support staff.

24 2.11 Party: any party to this Action, including all of its officers, directors,
25 employees, consultants, retained experts, and Outside Counsel of Record (and their
26 support staffs).

27 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
28 Discovery Material in this Action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

4. DURATION

Once a case proceeds to trial, all of the court-filed information to be introduced that was previously designated as confidential or maintained pursuant to this protective order becomes public and will be presumptively available to all members of the public, including the press, unless compelling reasons supported by specific factual findings to proceed otherwise are made to the trial judge in advance of the trial. See Kamakana v. City and Cty. of Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause” showing for sealing documents produced in discovery from “compelling reasons” standard when merits-related documents are part of court record). Accordingly, the terms of this protective order do not extend

beyond the commencement of the trial.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix, at a minimum, the legend

“CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or Non-Party that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in depositions that the Designating Party identify the Disclosure or Discovery Material on the record, before the close of the deposition.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable

1 efforts to assure that the material is treated in accordance with the provisions of this
2 Order.

3
4 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
6 designation of confidentiality at any time that is consistent with the Court's
7 Scheduling Order.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
9 resolution process under Local Rule 37-1, et seq. Any discovery motion must strictly
10 comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

11 6.3 Burden. The burden of persuasion in any such challenge proceeding
12 shall be on the Designating Party. Frivolous challenges, and those made for an
13 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
14 other parties) may expose the Challenging Party to sanctions. Unless the Designating
15 Party has waived or withdrawn the confidentiality designation, all parties shall
16 continue to afford the material in question the level of protection to which it is entitled
17 under the Producing Party's designation until the Court rules on the challenge.

18
19 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is
21 disclosed or produced by another Party or by a Non-Party in connection with this
22 Action only for prosecuting, defending, or attempting to settle this Action. Such
23 Protected Material may be disclosed only to the categories of persons and under the
24 conditions described in this Order. When the Action has been terminated, a Receiving
25 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

26 Protected Material must be stored and maintained by a Receiving Party at a
27 location and in a secure manner that ensures that access is limited to the persons
28 authorized under this Order.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
 2 otherwise ordered by the Court or permitted in writing by the Designating Party, a
 3 Receiving Party may disclose any information or item designated
 4 “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
 6 well as employees of said Outside Counsel of Record to whom it is reasonably
 7 necessary to disclose the information for this Action;

8 (b) Plaintiff, the officers, directors, and employees (including House
 9 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
 10 Action. This section does not apply to materials designated “Attorneys Eyes Only”,
 11 which must be designated as set forth in section 5.2 and additionally indicated, in the
 12 same manner that “CONFIDENTIAL” must be indicated in section 5.2, as “Attorneys
 13 Eyes Only”, and such designation is subject to the same challenging process as set
 14 forth in section 6;

15 (c) Experts (as defined in this Order) of the Receiving Party to whom
 16 disclosure is reasonably necessary for this Action and who have signed the
 17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (d) the Court and its personnel;

19 (e) court reporters and their staff;

20 (f) professional jury or trial consultants, mock jurors, and Professional
 21 Vendors to whom disclosure is reasonably necessary for this Action and who have
 22 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (g) the author or recipient of a document containing the information or
 24 a custodian or other person who otherwise possessed or knew the information;

25 (h) during their depositions, witnesses, and attorneys for witnesses, in
 26 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
 27 party requests that the witness sign the form attached as Exhibit A hereto; and (2) they
 28 will not be permitted to keep any confidential information unless they sign the

“Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as

authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this Court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a court

1 order to the contrary, the Non-Party shall bear the burden and expense of seeking
2 protection in this Court of its Protected Material.

3
4 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
6 Protected Material to any person or in any circumstance not authorized under this
7 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
8 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
9 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
10 persons to whom unauthorized disclosures were made of all the terms of this Order,
11 and (d) request such person or persons to execute the “Acknowledgment and
12 Agreement to Be Bound” that is attached hereto as Exhibit A.

13
14 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
15 **PROTECTED MATERIAL**

16 When a Producing Party gives notice to Receiving Parties that certain
17 inadvertently produced material is subject to a claim of privilege or other protection,
18 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
19 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
20 may be established in an e-discovery order that provides for production without prior
21 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
22 parties reach an agreement on the effect of disclosure of a communication or
23 information covered by the attorney-client privilege or work product protection, the
24 parties may incorporate their agreement in the stipulated protective order submitted
25 to the Court.

1 **12. MISCELLANEOUS**

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order, no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in this
7 Stipulated Protective Order. Similarly, no Party waives any right to object on any
8 ground to use in evidence of any of the material covered by this Protective Order.

9 12.3 Filing Protected Material. A Party that seeks to file under seal any
10 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
11 only be filed under seal pursuant to a court order authorizing the sealing of the specific
12 Protected Material at issue; good cause must be shown in the request to file under
13 seal. If a Party's request to file Protected Material under seal is denied by the Court,
14 then the Receiving Party may file the information in the public record unless
15 otherwise instructed by the Court.

16
17 **13. FINAL DISPOSITION**

18 After the final disposition of this Action, within 60 days of a written request by
19 the Designating Party, each Receiving Party must return all Protected Material to the
20 Producing Party or destroy such material. As used in this subdivision, "all Protected
21 Material" includes all copies, abstracts, compilations, summaries, and any other
22 format reproducing or capturing any of the Protected Material. Whether the Protected
23 Material is returned or destroyed, the Receiving Party must submit a written
24 certification to the Producing Party (and, if not the same person or entity, to the
25 Designating Party) by the 60 day deadline that (1) identifies (by category, where
26 appropriate) all the Protected Material that was returned or destroyed, and (2) affirms
27 that the Receiving Party has not retained any copies, abstracts, compilations,
28 summaries or any other format reproducing or capturing any of the Protected Material.

Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14. VIOLATION OF ORDER

Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

01-08-2024
DATED _____

/s/ Jeffrey Mikel

Attorneys for Plaintiff, LEONIDES ENRIQUEZ

01-08-2024
DATED: _____

/s/ Nicholas J. Masero

Attorneys for Defendants, CITY OF LONG BEACH, LIZARDO, and MAYS

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [full name], of _____ [full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ [date] in the case of _____ [insert case name and number]. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [full name] of _____ [full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____

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5 UNITED STATES DISTRICT COURT
6 CENTRAL DISTRICT OF CALIFORNIA
7 WESTERN DIVISION
8

9 LEONIDES ENRIQUEZ, individually.

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12

13 CITY OF LONG BEACH, a
14 governmental entity; and LIZARDO
15 Individually, MAYS, individually; DOE
16 "3", individually, DOE "4", individually,
DOES 5-10, inclusive.

Defendants.

Case No. 23-cv-6464-ODW-AJR

~~PROPOSED~~ ORDER RE
STIPULATED PROTECTIVE
ORDER

17 Having considered the papers, and finding that good cause exists, the Parties'
18 Stipulated Protective Order is **granted**.
19

20 **IT IS SO ORDERED.**
21

22 DATED: January 9, 2024, ~~2023~~
23

24 
A. JOEL RICHLIN
25 UNITED STATES MAGISTRATE JUDGE
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27
28